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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-385

ERIC JASON HAYES
15628 Georges Letour Avenue
Bakersfield, California 93314

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about November 13, 2006, the Board received an application for a Respiratory Care Practitioner License from Eric Jason Hayes (Respondent). On or about November 4, 2006, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on April 26, 2007.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:
9 “The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

13 7. Section 3750 of the Code states:
14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “ . . .

22 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
23 substantially related to the qualifications, functions, or duties of a respiratory care
24 practitioner.

25 “ . . . ”

26 8. Section 3750.5 of the Code states:
27 “In addition to any other grounds specified in this chapter, the board may
28 deny, suspend, or revoke the license of any applicant or license holder who has done

1 any of the following:

2 "(a) Obtained or possessed in violation of law, or except as directed by a
3 licensed physician and surgeon, dentist, or podiatrist administered to himself or
4 herself, or furnished or administered to another, any controlled substances as
5 defined in Division 10 (commencing with Section 11000) of the Health and Safety
6 Code. . . ."

7 ""

8 9. Section 3752 of the Code states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo
10 contendere made to a charge of any offense which substantially relates to the
11 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
12 a conviction within the meaning of this article. The board shall order the license
13 suspended or revoked, or may decline to issue a license, when the time for appeal
14 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
15 order granting probation is made suspending the imposition of sentence, irrespective
16 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
17 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
18 the verdict of guilty, or dismissing the accusation, information, or indictment."

19 10. California Code of Regulations, Title 16, section 1399.370, states:

20 "For the purposes of denial, suspension, or revocation of a license, a crime
21 or act shall be considered to be substantially related to the qualifications, functions
22 or duties of a respiratory care practitioner, if it evidences present or potential
23 unfitness of a licensee to perform the functions authorized by his or her license or in
24 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
25 shall include but not be limited to those involving the following:

26 " . . .

27 "(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

28 "(c) Conviction of a crime involving driving under the influence or reckless

1 driving while under the influence.

2 “...”

3 COST RECOVERY

4 11. Section 3753.5, subdivision (a) of the Code states:

5 "In any order issued in resolution of a disciplinary proceeding before the
6 board, the board or the administrative law judge may direct any practitioner or
7 applicant found to have committed a violation or violations of law to pay to the
8 board a sum not to exceed the costs of the investigation and prosecution of the
9 case."

10 12. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution
12 shall include attorney general or other prosecuting attorney fees, expert witness fees,
13 and other administrative, filing, and service fees."

14 13. Section 3753.1, subdivision (a) of the Code states:

15 "An administrative disciplinary decision imposing terms of probation may
16 include, among other things, a requirement that the licensee-probationer pay the
17 monetary costs associated with monitoring the probation."

18 CONTROLLED SUBSTANCE

19 14. Marijuana is a Schedule I controlled substance pursuant to Health
20 and Safety Code Section 11054.

21 FIRST CAUSE FOR DENIAL OF APPLICATION

22 (Conviction of a Crime)

23 15. Respondent's application is subject to denial under Business and
24 Professions Code sections 3750, subdivision (d), 3752, and California Code of Regulations,
25 Title 16, section 1399.370, subdivisions (b) and (c), in conjunction with Business and
26 Professions Code section 3732, subdivision (b), in that Respondent was convicted of crimes
27 substantially related to the qualifications, functions or duties of a respiratory care
28 practitioner. The circumstances are as follows:

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1 made an enforcement stop after he observed Respondent speeding. Upon contact
2 with Respondent, the officer smelled a strong odor of intoxicants coming from the
3 inside of the vehicle. The officer noticed that Respondent's speech was slow and
4 slurred, and his eyes were watery and bloodshot. When asked if he had been
5 drinking, Respondent stated, "I started drinking yesterday morning." He failed to
6 successfully complete the field sobriety tests. Respondent was arrested for driving
7 under the influence. The results of his breath test indicated his breath alcohol
8 concentration was .124%.

9 E. On or about April 4, 2001, in Pierce County District Court No. 1 of
10 the State of Washington Cause No. 1YC001049, Respondent was charged with
11 driving under the influence of intoxicants, in violation of RCW
12 46.61.502(1)(a)(b)(c), a gross misdemeanor (Count 1).

13 F. On or about August 27, 2001, Respondent was convicted upon his
14 plea of guilty to driving under the influence of intoxicants. He was placed on
15 probation for five years on the following terms and conditions, among others: serve
16 365 days in jail (with 364 days suspended), serve one day at an alternative DUI
17 detention program, complete alcohol information school, complete a one day DUI
18 victims panel program and pay a fine in the amount of \$785.00.

19 April 27, 1995 Conviction

20 G. In 1994, in County Criminal Court at Law No. 14 of Harris County,
21 Texas Information No. 9444370, Respondent was charged with theft, a
22 misdemeanor, following his arrest on or about June 1, 1993. On or about January
23 24, 1995, proceedings were deferred. Respondent was placed on probation for 180
24 days. He was ordered to pay fines and fees in the amount of \$217.00 and perform
25 24 hours of community service.

26 H. On or about March 21, 1995, Respondent violated his probation. On
27 or about April 27, 1995, the court found Respondent guilty of the crime of theft.
28 Respondent was ordered to serve 15 days in jail (with credit for 2 days), and pay

1 fines and fees in the amount of \$360.00.

2 April 27, 1995 Conviction

3 I. In 1995, in County Criminal Court at Law No. 14 of Harris County,
4 Texas Information No. 9509791, Respondent was charged with possession of
5 marijuana, following his arrest on or about March 9, 1995. On or about April 27,
6 1995, Respondent was convicted upon his plea of guilty to possession of marijuana,
7 a misdemeanor. He was ordered to serve 15 days in jail (with credit for 2 days) and
8 pay fees of \$205.00.

9 SECOND CAUSE FOR DENIAL OF APPLICATION

10 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

11 16. Respondent's application is subject to denial under Code section
12 3750, subdivision (j), in conjunction with section 3732, subdivision (b), in that he
13 committed a fraudulent, dishonest or corrupt act that is substantially related to the
14 qualifications, functions, or duties of a respiratory care practitioner. Respondent was
15 convicted of theft on or about April 27, 1995. The facts and circumstances, set forth above
16 in Paragraph 15, subparagraphs G and H of this Statement of Issues, are incorporated herein
17 by reference.

18 THIRD CAUSE FOR DENIAL OF APPLICATION

19 (Possession of a Controlled Substance)

20 17. Respondent's application is subject to denial under Business and
21 Professions Code section 3750.5, subdivision (a), in conjunction with section 3732,
22 subdivision (b), in that he was convicted of possession of marijuana, a Schedule I
23 controlled substance, on April 27, 1995. The facts and circumstances, set forth above in
24 Paragraph 15, subparagraph I of this Statement of Issues, are incorporated herein by
25 reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Eric Jason Hayes for a Respiratory Care Practitioner License;
2. Directing Eric Jason Hayes to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2007

Original signed by: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant